

POCKET NO: P-9520.00

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**ISSUE FEE TRANSMITTAL**

Application of: Baugh, et al.  
For: Autologous Platelet Gel Delivery System  
Serial No.: 09/832,729  
Filed: 04/09/2001

**CERTIFICATE UNDER 37 CFR §1.8** I hereby certify that this **ISSUE FEE TRANSMITTAL AND TRANSMITTAL** and the paper(s), as described herein are being deposited with the United States Postal Service, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 25th day of March, 2005.

Signature

Jo L. Brecht  
Printed Name

Attn: Box ISSUE FEE  
Commissioner for Patents  
and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

We are transmitting herewith the attached:

- ☒ Issue Fee Transmittal
- ☒ PTOL FORM 85B
- ☒ Fee Addressee for Receipt of PTO Notices Relating to Maintenance Fees
- ☒ Comments on Statement of Reasons for Allowance
- ☒ Return Postcard

- ☒ Please charge Deposit Account 13-2546 \$1,400.00 Issue Fee, \$300 Publication Fee and \$9.00 for 3 patent copies for a **Total of \$1,709.00.**
- ☒ Applicant believes that no extension of time is required. However, if an extension of time is required, please consider this a petition therefor to provide for the possibility that applicant has inadvertently overlooked the need for an extension of time and charge same to Deposit Account 13-2546.
- ☒ Please charge any additional fees or credits to Deposit Account No. 13-2546 which may have been overlooked on this Transmittal with regard to this filing.

Date

March 25, 2005

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Robert F. Baugh, et al.

Examiner: Matthew F. Desanto

Serial No.: 09/832,729

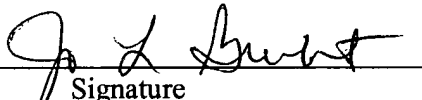
Group Art Unit: 3736

Filing Date: 04/09/01

Docket No.: P-9520.00

Title: AUTOLOGOUS PLATELET GEL DELIVERY SYSTEM

**CERTIFICATE OF MAILING UNDER 37 CFR 1.8:** I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450 on this 25<sup>th</sup> day of March, 2005.

  
\_\_\_\_\_  
Signature  
J. L. Brecht  
\_\_\_\_\_  
Printed Name

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

Commissioner of Patents and Trademarks  
U.S. Patent and Trademark Office  
Alexandria, VA 22313

Dear Sir:

Applicants agree that the claims in this case are in condition for allowance, and thank the Examiner for passing this case to issue. The Notice of Allowance included the blanket statement, "The examiner has interpreted the claims to invoke 35 U.S.C. 112 6<sup>th</sup> paragraph, and therefore his interpret[ation] of the claims must have the structure as described in the specification and must also work in the same manner as described in the specification." Applicants respectfully disagree.

In a claim, the word "means" is "part of the classic template for functional claim elements." *Rodime PLC, v. Seagate Technology, Inc.*, 174 F.3d 1294 (Fed. Cir. 1999) citing *Sage Products, Inc. v. Devon Industries, Inc.*, 126 F.3d 1420, 1427 (Fed. Cir. 1997).

To determine whether a claim element falls within § 112, ¶6 use of the word “means” raises a presumption that the patentee advisedly used the word to invoke the statutory mandate for means-plus-function clauses. *Rodime PLC*. In the absence of the word “means”, the presumption does not apply. In the present case, there are many claims that do not use the term “means” and therefore, applicant does not believe that the all of the claims should be interpreted to invoke 35 U.S.C. 112 6<sup>th</sup> paragraph. Even the claims that do use the term “means” should not, under appropriate examination guidelines or case law relating to claim interpretation, be strictly limited to strictly the “structure as described in the specification and must also work in the same manner.”

Registration Number 34,109	Telephone Number 763-391-9661
Date March 25, 2005	

Respectfully submitted,

By

  
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Jeffrey J. Hohenshell  
Senior Patent Counsel